



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

09/746,301

12/21/2000

Duc M. Pham

062891.0452

1837

7590

05/25/2004

Barton E. Showalter
Baker Botts L.L.P.
2001 Ross Avenue
Dallas, TX 75201-2980

EXAMINER

SORRELL, ERON J

ART UNIT

PAPER NUMBER

2182

2

DATE MAILED: 05/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/746,301

Applicant(s)

PHAM ET AL.

Examiner

Eron J Sorrell

Art Unit

2182

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 December 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1,4-8,10-14, and 17-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Fawcett (U.S. Patent No. 5,845,077).

3. Referring to method claim 1, system claim 8, logic coded in media claim 14, and apparatus claim 21, Fawcett discloses a method, system and apparatus, for verifying a software upgrade for a communication device comprising:

determining a plurality of transient variable maintained by a communication device executing first software (see lines 23-56 of column 7; Note the date and directory location are transient variables as they can change without modifying the application).

comparing a first variable set maintained by the communication device to a second variable set maintained by the

second communication device executing second software to identify changed variables (see lines 23-56 of column 7).

indicating a failure of the verification if at least one of the changed variables does not match one of the transient variables (see lines 45-56 of column 7; Note that if an application upgrade is indicated and flagged as available (a newer version exists), it has not been verified that the communication device is using the upgraded software).

4. Referring to method claim 4, system claim 10, and logic coded in media claim 17, Fawcett teaches step of comparing comprises:

loading the communication device with first software (see lines (see lines 23-56 of column 7);

determining a first variable set (see lines 23-56 of column 7);

loading the communication device with second software (see lines 23-56 of column 7);

determining a second variable set (see lines 23-56 of column 7);

comparing the first variable set to the second variable set to identify changed variables (see lines 23-56 of column 7).

Art Unit: 2182

5. Referring to method claim 5, system claim 11, and logic coded in media claim 18, Fawcett teaches the steps of determining, comparing, and indicating are performed by a software management system remotely coupled to the communication device using a packet network (see line 60 of column 4 to line 27 of column 5 and lines 9-11 of column 6).

6. Referring to method claim 6, system claim 12, and logic coded in media claim 19, Fawcett teaches the first and second variable set comprise at least a portion of a managed information base (MIB) maintained by the communication device (see lines 29-47 of column 5; note the database is the MIB).

7. Referring to method claim 7, system claim 13, and logic coded in media claim 18, Fawcett teaches generating the first variable set comprises:

issuing a query to the communication device for a specified variable (see lines 23-44 of column 7);

receiving a value for the specified variable from the communication device (see lines 23-44 of column 7;

repeating the steps of querying and receiving for each variable maintained in the first variable set (see lines 23-44 of column 7).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 2, 9, 15, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fawcett in view of Hopmann et al (U.S. Patent No. 6,694,335 hereinafter Hopmann).

10. Referring to method claim 2, system claim 9, logic coded in media claim 15, and apparatus claim 22, Fawcett fails to teach the step of determining a plurality of transient variables comprises:

determining a first copy of a variable set maintained by the communication device executing first software;

determining a second copy of a variable set maintained by the communication device executing first software;

comparing the first copy to the second copy to identify transient variables.

Hopmann teaches a step for determining a plurality of transient variables comprising determining a first copy of a variable set maintained by the communication device executing first software (see lines 3-19 of column 5);

determining a second copy of a variable set maintained by the communication device executing first software (see lines 3-19 of column 5);

comparing the first copy to the second copy to identify transient variables (see lines 3-19 of column 5).

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the system and method of Fawcett with the above teachings of Hopmann. One of ordinary skill in the art would have been motivated to make such modification in order to maintain synchronization between the communication devices as suggested by Hopmann (see lines 3-19 of column 5).

11. Claims 3 and 16 rejected under 35 U.S.C. 103(a) as being unpatentable over Fawcett in view of Shaw (U.S. Patent No. 6,381,741).

12. Referring to method claim 3 and logic coded in media claim 16, Fawcett fails to teach the limitation of repeating the steps

Art Unit: 2182

of determining, comparing, and indicating for a predetermined number of counts; and

indicating a pass of the verification if a failure has not been indicated after the predetermined number of counts.

Shaw teaches, in an analogous system, repeating the steps of determining, comparing, and indicating for a predetermined number of counts (see paragraph bridging columns 4 and 5); and

indicating a pass of the verification if a failure has not been indicated after the predetermined number of counts (see paragraph bridging columns 4 and 5).

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the system and method of Fawcett with the above teachings of Shaw. One of ordinary skill in the art would have been motivated to make such modification in order to ensure all of the segments of code that need updating are indeed updated as suggested by Shaw (see paragraph bridging columns 4 and 5).

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following references have been cited to show the current state of the art as it pertains to verification of upgraded software installation:

U.S. Patent No. 5,835,911 to Nakagawa and

U.S. Patent No. 5,974,454 to Apfel et al both teach comparing variables to determine if a communication device has the most current versions of software installed;

WO 01/90892 to McCaleb et al. is cited as it shows collecting information from a communication device and using that information to verify software upgrades.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eron J Sorrell whose telephone number is 703 305-7800. The examiner can normally be reached on Monday-Friday 9:00AM - 5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A Gaffin can be reached on 703 308-3301. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2182

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EJS
May 19, 2004



JEFFREY GAFFIN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100